

February 15, 1956

CONCORD, N.H.

Mr. Leon O. Gerry
Deputy Bank Commissioner
The State of New Hampshire
Concord, New Hampshire

Dear Mr. Gerry:

In reply to your inquiry of February 7 relative to the position of Attorney Robert B. Hamblitt as expressed in his letter to William J. Barrett, President, Nashua Trust Company, dated February 3, 1956, and its conflict with your department's ruling that no investment in notes under authority of RSA 387:18, as amended by 1955, 214:12, unless it complies with the provisions of RSA 387:4, 5 or 17, as amended by 1955, 214:14, 17, 11, respectively, I advise as follows:

It appears to me that the distinction made relates in the first instance to the difference in language used. RSA 387:4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 expressly designates the investments in said sections as "legal investments."

RSA 387:18 does not characterize the investments under that section as legal investments but rather as "not authorized investments under sections of this chapter, numbers 6 to 16, inclusive, but which are prudent investments for such a bank to make, provided" the bank is in certain financial condition and does not exceed certain limits of investments.

This distinction in terminology is underscored by the provisions of RSA 387:25, 26 and 27 which confer a particular status upon such legal investments "not including section 18." Investments in notes under section 18, even though secured by real estate and tangible personal

The Hon. C. O. Perry, Hampshire

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property or other collateral, or even if they involve participating loans, do not enjoy the status of legal investments unless they otherwise meet the requirements of RSA 387:4, 5 and 17, as amended. However, investments under RSA 387:18, as amended by 1955, 214:12, secured by real estate or tangible personal property or other collateral, or which is unsecured or which may involve participating loans, are permitted investments provided they are "prudent investments for such a bank to make within the limitations of said section 18."

In other words, by the enactment of section 18, the legislature has authorized certain investments without regard to the provision of sections 4, 5 or 17 of RSA 387, imposing upon the banks, their officers and trustees, the obligation and liability of being answerable in the event of loss by reason of said investments not being prudent. (RSA 387:23) and that no investment in notes can be made unless it complies with the provisions of section 4, 5 or 17.

Very truly yours,

Exception has been taken to our ruling, as you will see by the enclosed letter from Edward E. Barrett in William J. Barrett, President, to George F. Nelson dated February 3, 1956, and it is of Assistant Attorney General and by savings banks under the authority of section 18, whether or not such notes meet the requirements of sections 4, 5 or 17.

You will observe that in sections 4, 5 and 17 the words "loans" and "notes" are used, while in sections 6 through 16 the word "securities" is consistently used.

Will you please give us your opinion on this point?

Very truly yours,

Leon O. Gerry
Deputy Bank Commissioner

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Encl.